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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

CATHY PETERSON,

Plaintiff,

vs.

NATIONAL INTERSTATE
INSURANCE AGENCY, INC., a
foreign corporation,

Defendant.

Case No. 3:17-cv-01573

COMPLAINT

28 U.S.C.A. § 1332; Breach of
Contract

Demand for Jury Trial

JURISDICTION AND VENUE

1.

This is a breach of contract action. Plaintiff Cathy Peterson is a citizen of Nevada. Defendant National Interstate Insurance Agency, Inc., (herein referred to as Defendant Insurance Company) is a corporation organized under the laws of the State of Ohio, doing business in Ohio and in other states including the State of Oregon. The amount in controversy exceeds \$75,000, exclusive of interest and costs. Jurisdiction is proper under 28 U.S.C.A. § 1332.

LIABILITY FACTS

2.

Defendant Insurance Company sold an automobile liability insurance policy, number YPP 1385670 03, to MTR Western, LLC, a foreign LLC, organized under the laws of the State of Washington and doing business in Washington and other states including the State of Oregon. The policy was a commercial policy for charter bus operations conducted by MTR Western, LLC, and covered, among other vehicles, the 2013 white Ford passenger bus, license plate B013692, driven by Cathy Peterson on May 10, 2014. At all relevant times, Cathy Peterson was employed as a bus driver by MTR Western, LLC, was within the course and scope of her employment, and was an “insured” under Defendant Insurance Company’s policy.

3.

On May 10, 2014, at around 5:00 a.m., a driver in a Chevrolet Venture failed to obey a red light when driving north on SW Cedar Hills Boulevard and collided with the passenger bus Cathy Peterson was driving east on SW Canyon Road through a green light. The negligent driver struck Ms. Peterson’s bus with such force that the bus swerved and rolled onto the passenger side.

4.

The driver of the Chevrolet Venture was insured through Safeco Insurance Company of Oregon with a policy providing liability insurance coverage of only \$100,000. Cathy Peterson notified Defendant Insurance Company that the Safeco policy limits was \$100,000 only, and Ms. Peterson requested Defendant Insurance Company to approve settlement of her claim against the driver of the Chevrolet Venture for the \$100,000 policy limit. On April 13, 2017, Defendant Insurance

Company consented by email to Ms. Peterson's settling of the claim against the at-fault driver for the liability policy limits of \$100,000.

UNDERINSURED MOTORIST FACTS

5.

Defendant Insurance Company's policy provides \$5,000,000 in liability coverage for MTR Western, LLC. Oregon law, ORS 742.502(2)(a), requires insurance companies to provide equal uninsured and underinsured coverage to liability coverage. ORS 742.502(2)(b) allows an insured to elect to reduce uninsured and underinsured coverage but in compliance with enumerated restrictions set forth in the statute.

6.

As early as August 20, 2014, Defendant Insurance Company acknowledged receipt of proof of loss by letter. On January 4, 2016, Defendant Insurance Company denied underinsured motorist coverage. Defendant Insurance Company did not accept coverage or consent to submit the case to binding arbitration within six months from the date proof of loss was filed.

7.

Defendant Insurance Company has denied underinsured motorist coverage to Plaintiff, arguing that its policy included a form, which allowed it to reduce its coverage for MTR Western employees and passengers from \$5,000,000 to \$25,000. Defendant Insurance Company has provided a certified true copy of the form included in an image reduced in size on the following page:

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**SELECTION OF LOWER LIMIT OF LIABILITY
FOR UNINSURED MOTORISTS COVERAGE
(OREGON)**

Oregon Insurance Laws (ORS 742.502) permits you, the insured named in the policy, to select a limit of liability for Uninsured Motorists Coverage lower than the limit for Bodily Injury Liability Coverage in the policy. Uninsured Motorists Coverage insures you, the insured, for all amounts that you are legally entitled to recover as damages for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of an uninsured motor vehicle, subject to the terms of the policy.

Uninsured Motorists Coverage includes underinsured motorists coverage. Underinsured motorists coverage insures you, the insured, and others covered under the Uninsured Motorists Coverage for damages to the extent that your Uninsured Motorists Coverage benefits are greater than the amount recovered from other motor vehicle liability insurance policies.

Comparison of prices for coverage:

\$_____ is the price per vehicle for Uninsured Motorists Coverage at a limit equal to the bodily injury liability limit under the policy issued or to be issued.

\$_____ is the price per vehicle for Uninsured Motorists Coverage with the lower limit for Uninsured Motorists Coverage of \$_____, which I, a named insured, have requested.

I, a named insured, elect the lower limit of liability for Uninsured Motorists Coverage as shown above. I acknowledge that I was offered Uninsured Motorists Coverage at a limit equal to that for Bodily Injury Liability Coverage.

This statement will remain in force until a named insured rescinds it in writing or until the motor vehicle bodily injury liability limits are changed.

Signature and date (PLEASE NOTE: a named insured must sign and date this statement within 60 days of the time a named insured elects lower limits.)

Signature of Named Insured

4/30/14

Date of Signature

CLAIM FOR RELIEF: BREACH OF CONTRACT

8.

Defendant Insurance Company's form is deficient under ORS 742.502(2)(b) in the following:

- (a) It does not state “the price for coverage with limits equal to the named insured’s bodily injury liability limits and the price for coverage with the lower limits the named insured requested.” ORS 742.502(2)(b).
- (b) It does not include a “brief summary that is not part of the insurance contract and that describes what the underinsured coverage provides.” ORS 742.502(2)(b).

9.

Plaintiff is entitled to enforcement of the underinsured motorist coverage in Defendant Insurance Company’s contract for the amount of harm and losses she sustained in the collision described in this Complaint and to be determined by the jury, less the amount paid by Safeco.

10.

In the described collision, Plaintiff Cathy Peterson suffered serious injuries, including injuries to her brain, eyes, neck, back, left knee, left ankle, lower left leg, and feeling of fluid in her ears. The traumatic brain injury included post-concussive syndrome with cognitive, memory, speech and vision problems; cognitive fatigue; headaches; dizziness; balance disturbance; disability; and discomfort. These injuries interfere with and limit her activities, all to her non-economic damage in an amount to be determined by the jury.

11.

As a result of her injuries, Cathy Peterson has required the services of physicians, radiologists, therapists, and medications, all to the expense of approximately \$50,000 to date. She will continue to require care of physicians and therapists in an amount to be determined at trial.

12.

As a result of her traumatic brain injury, Cathy Peterson has been declared permanently disabled, sustaining loss of income, past and future, in an amount to be determined at trial. Plaintiff may amend her Complaint prior to trial in respect to the amount of her economic damages.

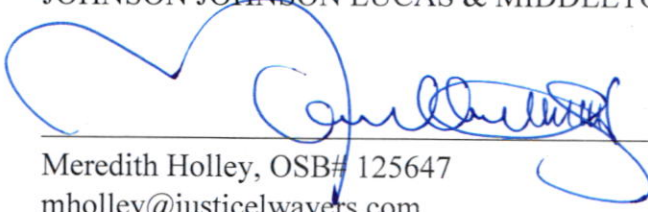
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered against Defendant National Interstate Insurance Agency, Inc., ordering enforcement of the insurance contract, including:

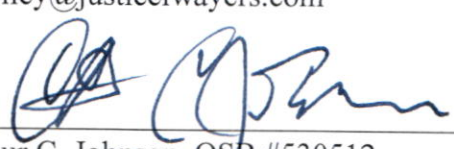
- a. Fair and reasonable noneconomic damages in an amount to be determined by the jury;
- b. Past and future medical expenses in an amount to be determined by the jury;
- c. Past and future wage loss in an amount to be determined by the jury;
- d. Plaintiff's costs and expenses incurred in this proceeding, including a reasonable amount of fees under ORS 742.061, to be fixed by the Court.

DATED this 4th day of October, 2017.

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